U.S. Department of Justice

United States Attorney
Eastern District of New York

610 Federal Plaza
Central Islip, New York 11722

December 5, 2025

By ECF
Honorable Joan M. Azrack
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 1172

Re: *Montoya v. Bondi, et. al.*, No. 25-cv-6363 (Azrack, J.)

Dear Judge Azrack:

This Office represents Respondents in this action brought by Petitioner Angel Maternidad Ulloa Montoya ("Petitioner"). Respondents respectfully submit this letter in response to the Court's December 3, 2025 order (the "December 3 Order"), noting that Respondents' response to Petitioner's motion for a temporary restraining order and preliminary injunction (ECF No. 14) ("Respondents' Memorandum") addresses the merits of the underlying habeas petition (the "Petition") and giving Respondents permission to file any further briefing opposing the Petition by 11:59 this evening.

Respondents argue, *inter alia*, that Petitioner falls squarely within the ambit of 8 U.S.C. § 1225(b)(2)'s mandatory detention requirement because Congress mandated that "an alien present in the United States who has not been admitted" "shall be deemed . . . an applicant for admission." *See* Respondents' Memorandum at p. 18 (quoting 8 U.S.C. § 1225(a)); *see also id.* at p. 15-28. Respondents respectfully submit this letter to inform the Court of two recent decisions from district court judges in this Circuit, *Chen v. Almodovar, et al.*, No. 25-cv-8350 (MKV), 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025), and *Candido v. Bondi, et al.*, No. 25-cv-867 (JLS), 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025), supporting this point.

In *Chen,* the alien entered the United States without having been admitted, was released on his own recognizance due to lack of bed space, and remained in the country unlawfully for two years during the pendency of removal proceedings; he was recently detained pursuant to 8 U.S.C. §1225(b)(2)(A), which requires mandatory detention while an applicant for admission remains in removal proceedings. The Honorable Mary Kay Vyskocil dismissed the habeas petition, holding that "under the plain language" of §1225(b)(2)(A), the petitioner was subject to mandatory detention pending the resolution of his removal proceedings. *Chen,* 2025 WL 3484855 at *4. She reasoned that "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country," *inter alia* rejecting various surplusage arguments arising from the Laken Riley Act and the phrase "seeking admission." *Id.* at *5-7. Judge Vyskocil also observed that use of procedures not pertinent to § 1225(b)(2), could "conceivabl[y]" be ascribed

to "the executive Branch failing to enforce" that statute, and a "failure by the executive Branch to enforce a statutory provision, or its conclusion that the law does not apply, does not nullify a duly enacted law." *Id.* at *2 n.1 & *7; *see also Candido,* 2025 WL 3484932 at *2 (finding detention under 8 U.S.C. § 1225(b)(2)(A) was proper for alien present unlawfully for two decades without having been admitted, noting that "[t]he fact that more district courts…have decided this issue differently from this court is neither binding nor persuasive.").

We thank the Court for its consideration of this submission.

Respectfully submitted,

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United States Attorney

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cc: Joshua Stickell, attorney for Petitioner (by ECF)